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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/609,598	06/29/2000	Jay S. Walker	00-023	1725

22927 7590 02/09/2005

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EXAMINER
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THEIN, MARIA TERESA T

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 02/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/609,598

Applicant(s)

WALKER ET AL.

Examiner

Marissa Thein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-64 and 66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-64 and 66 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 18, 2004 has been entered.

### ***Response to Amendment***

Applicants' "Amendment and Response" filed on November 18, 2004 has been considered with the following effect.

Claims 1, 55, 58, 59, 60 are amended. Claim 65 is cancelled. Claims 1-64 and 66 remain pending in this application.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-64 and 66 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1- 66 are rejected under 35 U.S.C. 102(b) as being anticipated by the website [www.peapod.com](http://www.peapod.com).**

Claims 1, 55, 58, 60 and 66, [www.peapod.com](http://www.peapod.com) discloses a method, an apparatus, a medium storing instructions of facilitating transaction comprising: processor (pages 51-56); storage device (pages 51-56); receiving an indication of a plurality of product categories each product category being associated with a plurality of products (deli, bakeshop, dairy, snacks, etc, page 15; click on the find item icon, pages 15-16, we are linked into the grocer's main frame computer....are as indicators of what items are on sale); receiving a buyer offer information (estimated grocery total, page 23; personal shopper special instructions about any items; page 18; you can give us specific..... instructions; page 7), including an indication of an offer amount (estimated grocery total, page 23) associated with the plurality with the plurality of product categories (members can shop by category, page 47; personal list, page 21); selecting (enter the name of the item, page 16), via a controller (computer/modem), a subset of the plurality of products for each of the product categories (pages 16-17) associated with the offer amount (estimated grocery total, page 23); and providing an indication of the selected products (pages 16-17).

Regarding claims 2-18, 28-33, [www.peapod.com](http://www.peapod.com) discloses receiving the indication of the plurality of product categories from the buyer (membership, shopper) (page 15; membership access to over 20,000 grocery and drugstore items with the click of your mouse, page 4); communication network, internet, web site, a telephone network, a wireless network, and proprietary network ([www.peapod.com](http://www.peapod.com)); a buyer

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device, a personal computer, a personal digital assistant, a telephone, a controller, a merchant device, kiosk, interactive voice response unit, an operator, a point of sale terminal, and an automated teller machine device (computer (modem or internet); telephone, page 4); product description and each product comprises a product brand associated with the product description (pages 16-17); indication of a plurality of acceptable products (pages 16-17); products is retrieved from a database (pages 16-17); products and the buyer offer information are received with respect to a single transaction (estimated grocery total, page 23); receiving the buyer offer information from a buyer (page 23); binding offer (page 23 and page 25); a buyer-defined offer amount (page 23 and page 25); a plurality of product category offer amounts (pages 23-25); a selection from a list of suggested offer amount (pages 23-25); selecting a particular for at least one of the product categories (pages 16-17); a transaction history associated with a buyer (last order, page 15), an address associated with the buyer, demographic information associated with the buyer, psychographic information associated with the buyer, a credit rating, and an other offer associated with the buyer (page 19, page 21, page 22); selecting at least one of the products based on the offer amount (pages 22-23); providing the indication to the selected products to a buyer (pages 15-17); providing the indication of the selected products to a merchant (page 25); single communication network (pages 4-8); first communication network (pages 4-8); second communication network (pages 4-8).

Regarding claims 19-27, [www.peapod.com](http://www.peapod.com) discloses the subsidy (coupons, online electronic discounts, and retailer preferred customer discounts); associated with

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one of the selected products; associated one product not selected; associated with a manufacturer; the manufacturer provides payment of a subsidy amount on a product-by-product basis; subsidy based on a predetermined number of products being sold; predetermined percentage of products being sold; and a combination of products being sold; a buyer, a controller, and a merchant; subsidy is associated with a product identifier, product category, a product manufacturer, a product brand, etc.; and tracking subsidies applied to the transaction (see at least page 4, page 22; page 23, page 25).

Regarding claims 34-41, 47-48, and 61-64, [www.peapod.com](http://www.peapod.com) discloses evaluating the buyer offer information based on the offer amount (pages 22-23 and page 25); evaluating is based on transaction history associated with a buyer, an address associated with the buyer, demographic information, psychographic information, a credit rating, another offer associated with the buyer, and indication of a plurality of merchants; calculating a probability that an offer will be accepted based on the offer amount, and at least one minimum acceptable price associated with the selected products; one minimum acceptable price associated with the selected products; the minimum acceptable price is based on a product cost and a product retail price; calculating a total minimum acceptable price based on the sum of each minimum acceptable price (subtotal); comparing the total minimum acceptable price to the offer amount (estimated grocery total); applying a penalty (fee) to the buyer based on the evaluation (peapod fee, page 23); determining that the buyer offer information is not acceptable (page 23); providing a suggested modification to the buyer offer information (page 23); and the suggested modification comprises a modified offer, a modified

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plurality of product categories; and a modified plurality of products associated with at least one product category (page 23). (See at least pages 4-8; page 23; page 25; pages 41-45)

Regarding claims 42-46, [www.peapod.com](http://www.peapod.com) discloses evaluating is further based on a subsidy; determining the subsidy based on the plurality of product categories; selecting the subsidy from a plurality of potential subsidies; the subsidy based on information associated with a buyer subsidy is associated with a product identifier, product category, a product manufacturer, a product brand, etc.; and tracking subsidies applied to the transaction (see at least page 4, page 22; page 23, page 25).

Regarding claims 49-54, [www.peapod.com](http://www.peapod.com) discloses arranging for a buyer to provide payment (payment method) of an amount based on an offer amount (page 25); arranging comprises arranging to receive payment from the buyer (page 25); arranged to provide payment to a merchant (page 25); and the buyer to provide payment to a merchant (page 25); transmitting information (sending order) enabling a buyer to take possession of the selected products at a merchant (page 25); and arranged for the selected products to be delivered to a buyer (delivery information, page 25).

Regarding claims 56-57, [www.peapod.com](http://www.peapod.com) discloses a communication device coupled to the processor and adapted to communicate with at least one of: a buyer device, merchant device, a subsidy provider device and a payment processing device (see at least pages 51-56; pages 4-8).

Regarding claim 59, [www.peapod.com](http://www.peapod.com) discloses a computer-implemented method of facilitating the sale of products, comprising: receiving from a buyer a payment

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identifier (preferred payment method, check, credit card, or electronic debit from your checking, page 25); receiving from the buyer an indication of a first product category associated with a first set of products (page 16 and page 21); receiving from the buyer an indication of a second product category associated with a second set of products (page 17 and page 22); receiving from the buyer a binding buyer offer, including an indication of an offer amount (estimated grocery total) associated with the first set of products and the second set of products (page 17 and page 21); selecting a first product from the first set of products associated with the offer amount (page 16 and page 21); selecting a second product from the second set of products wherein at least one of the first product and the second product are selected based on an associated subsidy (electronic coupons) (page 17 and pages 21-22); evaluating the buyer offer based on the offer amount (page 23); arranging for the buyer to provide payment of an amount based on the offer amount using the payment identifier (payment method) (page 25); providing to the buyer an indication of the first product and the second product (pages 16-17 and page 21); and transmitting information enabling the buyer to take possession of the first product and the second product at a merchant (pages 24-25).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 6,260,024 to Shkedy discloses a global bilateral buyer-driven system for creating binding contracts.



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U.S. Patent Application Publication No. 2003/0093355 to Issa disclose an Internet auction method, system, and computer site where independent a and/or unrelated buyers are automatically pooled to buy products/services as a group in order to entice competitive bidding from pre-approved sellers who take advantage of the large group sales to bid (offer) discounts.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marissa Thein whose telephone number is 703-305-5246. The examiner can normally be reached on M-F 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on 703-308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mtot  
February 6, 2005

 2/7/05  
**MICHAEL CUFF**  
PRIMARY EXAMINER